

**frontier**

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February 10, 1995

BY OVERNIGHT MAIL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: MD Docket No. 95-3**

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Frontier Cellular Holding Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same in the enclosed, self-addressed envelope.

Very truly yours,

*Michael J. Shortley III*

Michael J. Shortley, III

cc: International Transcription Service

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEB 13 1995

In the Matter of

Assessment and Collection  
of Regulatory Fees for  
Fiscal Year 1995

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MD Docket No. 95-3

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**COMMENTS OF FRONTIER  
CELLULAR HOLDING INC.**

Frontier Cellular Holding Inc. ("Frontier Cellular") submits these comments in response to the Commission's Notice in this proceeding.<sup>1</sup> In the Notice, the Commission set forth its proposals for assessing and collecting the regulatory fees authorized by Congress.<sup>2</sup> The Commission has proposed assessing cellular carriers a fee of approximately thirteen cents per telephone number, an assessment almost double that of last year.<sup>3</sup>

Contrary to last year's methodology, the Commission is proposing to assess the fee on the basis of the number of cellular or paging units in service, rather than the number of customers. The Commission is also proposing to exclude resellers of cellular service from paying the assessment (indeed, it is placing that responsibility on the facilities-based

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<sup>1</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Dkt. 95-3, Notice of Proposed Rulemaking, FCC 95-14 ("Notice").

<sup>2</sup> See 47 USC § 159(b)(2).

<sup>3</sup> Notice, ¶ 44.

Frontier Cellular understands that the Commission has no discretion over the total size of the regulatory assessment. Nonetheless, the size of the proposed increase requires that the Commission consider whether its proposed methodology for assessing the regulatory fee is the most equitable that could be devised.

carriers). The Commission should decline to adopt this approach. Rather, it should require cellular resellers to bear their fair share of the assessment and should base the assessment on the number of customers that a cellular or paging provider serves.

*First*, there is no reason to exempt resellers from the regulatory assessment. Resellers benefit as much from the "use of frequencies of communications"<sup>4</sup> as do facilities-based cellular carriers. Like facilities-based carriers, resellers offer services to the public and, indeed, they are direct competitors of facilities-based carriers. Indeed, the only difference between a facilities-based carrier and a reseller is the decision whether to acquire the necessary authorizations and construct a network or to lease capacity from another carrier. In addition, by exempting resellers (and requiring facilities-based carriers to pick up this tab), the Commission's proposal is competitively inequitable. If adopted, it would effectively require one class of cellular carrier to subsidize its competitors. There is no valid policy basis -- and the Commission has identified none -- for this outcome.

Moreover, the Commission's proposal is completely inconsistent with its proposed treatment of long distance and interstate access resellers. The Commission is correctly proposing that these resellers pay their share of the regulatory assessment. The Commission specifically concluded that this approach was reasonable because:

We now believe that resellers and other carriers providing interstate services subject to our jurisdiction and directly benefitting from our regulation of the interstate network should be subject to a regulatory fee payment. In particular, we are

cognizant that our decisions requiring facilities based carriers to eliminate any restrictions on the resale and sharing of their interstate private line communications services and facilities and our continuing market surveillance has fostered the growth of a strong communications resale industry.<sup>5</sup>

Precisely the same rationales apply to cellular resellers. Commission policy encourages cellular resale and has directly benefitted the cellular resale industry. Thus, for the very reasons that the Commission has identified for assessing the regulatory fee on other resellers, it should require cellular resellers to pay their fair share of the regulatory assessment. Off-loading that burden onto the facilities-based carriers is particularly inequitable.

*Second*, the Commission should assess the fee on the basis of the number of subscribers that a cellular or paging carrier serves, rather than on the number of units in service. This is the method prescribed in the statute<sup>6</sup> and was utilized last year. There is no reason to believe that this method was inequitable. Nonetheless, the Commission justifies the proposed change on the basis of its belief that "the total number of telephone numbers ... would better reflect the benefit that the licensee receives from its use of frequencies of communications."<sup>7</sup>

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<sup>5</sup> *Id.*, ¶ 56.

<sup>6</sup> 47 USC § 159(g).

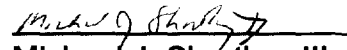
Frontier Cellular agrees that the Commission has the authority to adopt, as a permitted amendment, a different base upon which to assess the fee. It does suggest, however, that this particular proposed amendment is unwarranted.

<sup>7</sup> Notice, ¶ 44.

The Commission's conclusion is not necessarily accurate. Carriers that are able to offer services that attract multi-line customers are utilizing spectrum to address customer demand better than those that are less successful in offering such services. Effectively, the Commission's proposal would penalize carriers that offer innovative services to the public. Thus, the Commission should assess the regulatory fee for cellular carriers on the basis of subscribers, rather than on the basis of telephone numbers.

For the foregoing reasons, the Commission should modify its proposed regulatory assessment for Fiscal Year 1995 as suggested herein.

Respectfully submitted,

  
Michael J. Shortley, III

Attorney for Frontier  
Cellular Holding Inc.

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February 10, 1995